IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10240 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALKRISHNA AMRITLAL MISTRI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10240 of 2001

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

1. The petitioner has been detained by an order passed by the Commissioner of Police, Surat City, Surat, on the October 17, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social

Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration one offencesregistered against the petitioner under the provisions of the Bombay Prohibition Act, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Shukla, learned advocate for the petitioner, contended that a representation was made on the October 23, 2001 and the authority concerned rejected the same on the 3rd November, 2001. A communication in this regard was addressed to the detenu only on November 8, 2001. Therefore, there is delay of five days in communicating the order rejecting the representation of the detenu. The delay in communicating the decision on the representation has affected the right of the detenu of making an effective representation and, therefore, the continued detention is vitiated. He, therefore, urged that the petition may be allowed and the order of detention may be quashed and set aside.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, petition deserves to be allowed on the ground that there is delay in communicating the decision on the representation of the detenu. Though the representation was rejected on the 3rd November, 2001. Therewas a holidy on the 4th November, 2001 on account of Sunday. The 5th, 6th and the 7th November, 2001 were working, yet the decision was communicated to the detenu only on the 8th November, 2001. There is a clear delay of 5 days in communicating the order of rejection of the representation of the detenu. This would affect the right of the detenu of making an effective representation. Therefore, the continued detention would be vitiated as held by this Court in the case of Anubhai M. Jani v. State of Gujarat, 2000(3) GLR 649. The petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The

impugned order of detention dated the 17th October, 2001, passed against the detenu is hereby quashed. The detenu-Balkrishna Amritlal Mistri is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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